

December 9, 2022

Via email to crighetti@mahoningcountyoh.gov,
dditzler@mahoningcountyoh.gov, and atraficanti@mahoningcountyoh.gov

Mahoning County Commissioner Carol Rimedio-Righetti
Mahoning County Commissioner Anthony Traficanti
Mahoning County Commissioner David Ditzler
21 West Boardman Street, 3rd Floor
Youngstown, OH 44503

Re: Unconstitutional termination of Ricky Morrison in violation of the First and Fourteenth Amendments to the U.S. Constitution and Ohio law

Dear Commissioners:

Our firm represents Mr. Ricky Morrison, a former county employee whom you unlawfully terminated in violation of the First and Fourteenth Amendments to the United States Constitution.

We demand that—to mitigate the harm you have inflicted—you immediately and unconditionally reinstate Mr. Morrison to his original position and salary/benefits. He is a **cancer patient** and you have inflicted irreparable harm on him by stripping him of the healthcare he needs **now**.

We explain below the constitutional principles we believe are at stake, what Mr. Morrison experienced, how you individually and the County are liable, and what we expect and why. We also explain specifically our demand for evidence and data preservation. We expect a response by **Friday, December 16, 2022**.

1. The First Amendment guarantees public employees free-speech and free-association rights, as well as the right to petition the government for redress.

The First Amendment, applied to state political subdivisions through the Fourteenth Amendment, guarantees public employees the right to freedom of speech and association in their capacity as private citizens. It also guarantees us all the right to petition our government for redress.

To establish a First Amendment-retaliation claim, a public employee must demonstrate that

- (1) the employee engaged in constitutionally protected speech or conduct;

- (2) an adverse action was taken against the employee that would deter a person of ordinary firmness from continuing to engage in that conduct; and
- (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by his protected conduct.

See, e.g., *Benison v. Ross*, 765 F.3d 649, 658 (6th Cir. 2014); *DeCrane v. Eckart*, 12 F.4th 586, 594 (6th Cir. 2021) (our firm’s case—the leading First Amendment–retaliation case in the Sixth Circuit).

A public employee must show that his speech was made as a private citizen and on a matter of public concern. *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). Courts engage in a three-step inquiry to determine whether public employees’ speech is protected. *Buddenberg v. Weisdack*, 939 F.3d 732, 739 (6th Cir. 2019) (our firm’s case):

- *First*, the court must determine whether the speech addressed a matter of public concern. *Connick v. Myers*, 461 U.S. 138, 143 (1983). Speech involves a matter of concern when it relates to “any matter of political, social, or other concern to the community” or is the “subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” *Lane v. Franks*, 573 U.S. 228, 240 (2014) (citations omitted).
- *Second*, the court must determine whether the employee spoke as a private citizen or as an employee pursuant to his official duties. *Garcetti*, 547 U.S. at 421. The First Amendment does not protect speech made by a public employee pursuant to her official duties. *Garcetti*, 547 U.S. 421. The critical question is whether the speech at issue is *ordinarily* within the scope of the employee’s professional duties. *Lane*, 573 U.S. at 240.
- *Third*, the court must balance the interests of the parties and determine whether the employee’s speech interest outweighs “the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

2. How you violated Ricky Morrison’s rights.

Before he worked for Mahoning County, Mr. Morrison ran a successful landscaping business in the area. Unfortunately, during the summer of 2022, Mr. Morrison was diagnosed with cancer and desperately needed better medical and retirement benefits. He was forced to close his business and seek other employment—preferably a job that carried medical benefits.

As luck would have it, Mahoning County was hiring for a position in its maintenance department. Mr. Morrison, we understand, was one of only two applicants and was ultimately hired for the position. He began work on September 12, 2022. During this time, Mr. Morrison performed exceptionally well, was on-time every day, was never written up or disciplined in any way, and even worked extra hours when the County needed additional assistance.

Conversely, another co-worker hired around the same time as Mr. Morrison did not perform to such a level. This other co-worker was repeatedly late for work and received several reprimands for his poor performance.

On Monday, November 28, 2022, Mr. Morrison, as a private citizen, attended a public meeting at the Mahoning County Board of Elections. The meeting, which was to begin at 3:00 pm, was being convened to address the recounting of votes in the hotly contested Mahoning County Commissioner race between incumbent Democrat Carol Rimedio-Righetti and Republican challenger Geno Difabio.

The meeting was not during Mr. Morrison's scheduled workday. Mr. Morrison worked Monday through Friday from 4:00am to 12:00pm. His attendance at the meeting was indisputably not a part of his ordinary, or even *ad hoc*, job duties as a County maintenance worker. He was not a policymaker.

Mr. Morrison arrived at the meeting and took a seat next to Mr. Difabio, whom Mr. Morrison had, as a private citizen, supported for the Commissioner's position. Ms. Rimedio-Righetti was seated directly behind Mr. Difabio and would have seen Mr. Morrison sitting with and speaking with him. During the meeting, it was announced that Ms. Rimedio-Righetti was successful in her re-election bid, winning by a mere 137 votes.

Mr. Morrison's presence and association with Mr. Difabio in the meeting apparently spoke volumes. Afterward, as they were leaving, Mr. Morrison congratulated Ms. Rimedio-Righetti on her re-election.

Ms. Rimedio-Righetti told Mr. Morrison that he looked familiar and he informed her that he worked for Mahoning County's maintenance department.

Ms. Rimedio-Righetti said, "Are you Dave Bucci?"

Mr. Morrison responded, "No. I'm Ricky—" and before he could say his last name, Ms. Rimedio-Righetti said, in a disgusted tone, "Ricky Morrison. You work for us. Unreal!" Ms. Rimedio-Righetti then abruptly turned and stated in a loud irritated voice, "Wow!" and walked away without saying another word to Mr. Morrison.

On Friday, December 2, 2022, Mr. Morrison was called into his supervisor's office and informed that "the Commissioners" had decided to terminate him. (We expect that any such decision by the Board of Commissioners was made in violation of Ohio's Open Meetings Act.) When asked for the reason, the supervisor could not give one and expressed his similar shock and dismay at the termination. The supervisor even agreed to pay Mr. Morrison for the entire day's work even though he had only worked half of his shift.

Mr. Morrison, still in shock at the Commissioners' conduct, called Mr. Difabio and informed him of his termination. Mr. Difabio contacted one of the Commissioners for an explanation. The Commissioner confirmed that Mr. Morrison was terminated because he was sitting and talking with Mr. Difabio at the public hearing.

Your termination of Mr. Morrison violated his free-speech, freedom-of-association, and government-petition rights guaranteed by the First and Fourteenth Amendments to the Constitution.

You have also stripped a cancer patient of his vitally needed healthcare benefits during his needed cancer treatment. A county human-resources representative confirmed for Mr. Morrison on or about December 5, 2022 that he has been cut-off from his health-insurance benefits—despite *his having paid for them in advance out of his paycheck*.

Mr. Morrison was expressing himself by sitting with, associating with, and speaking with Mr. Difabio at an elections board hearing—actions he undertook as a private citizen. The expression was on a matter of public concern, namely, election-results and vote-counting. None of this was a part of his official (or even *ad hoc*) duties as a county maintenance worker. And there is no conceivable interest by the County as an employer in retaliating against maintenance-worker Mr. Morrison by stripping him of his job, salary, benefits, and healthcare for his First Amendment-protected conduct, political speech being at the pinnacle of such protection. None.

Finally, as shown above, there really is no question that Mr. Morrison’s sudden firing, absent any record of performance problems, was causally connected to his First Amendment-protected activity. A commissioner has admitted as much.

For violation of these clearly established rights by high-level policymakers, not only will the County be liable under 42 U.S.C. § 1983 (the federal civil-rights statute), but you Commissioners as *individuals* will be as well. As individuals, you may also be liable under R.C. 2307.60 (Civil Action for Damages for Criminal Acts) in combination with R.C. 2921.45 (Interference with Civil and Statutory Rights). See discussion and our firm’s leading Supreme Court of Ohio cases here: <https://www.chandralaw.com/practice-areas/crime-victims-civil-action-for-damages-for-criminal-acts-under-ohio-revised-code-nbsp230760#>.

3. Each of you, the County, and County employees must preserve evidence and data.

We are notifying all of you individually, the County, and county managers, supervisors, and employees including supervisors and employees in Mr. Morrison’s department that you all must preserve all electronically stored information (ESI), copies, and backup, as contemplated by Rule 34 of both the Federal and Ohio Rules of Civil Procedure, along with all paper files maintained, that may be relevant to this action. ***These records include but are not limited to the following:***

- (1) all cellphone records;
- (2) all emails, text messages, and private and public social-media-service messages—including those sent and received on personal electronic devices (such as cellphones, tablets, and laptops) or contained in cloud-based storage services; and
- (3) all records of any communications about Mr. Morrison, whether by name or impliedly;

Again, this preservation should include communications on personal devices including employee cellphones.

As you may be aware, merely “backing up” a computer or other device by copying data to a USB drive, CD, or DVD may be insufficient to adequately meet the requirements for preserving ESI because doing so can omit potentially relevant data such as deleted files, configuration files, file-allocation tables, logs, and other artifacts. To avoid these issues, you may need to bit-by-bit images of hard drives in bit-stream copies, where all areas, used and unused, of a hard drive are copied. If a file is deleted before a backup is made, the deleted file will not be copied unless it is a bit-stream copy. All deleted files that are reasonably recoverable should be immediately undeleted. No procedures should be implemented to alter any active, deleted, or fragmented data. And no electronic data should be disposed of or destroyed.

We further trust that you will preserve such electronic data and paper files, and that you will promptly notify us if any such records have been destroyed.

4. Conclusion.

We take Mr. Morrison’s case very seriously. Our determination and success in such matters can be ascertained by reviewing our website, www.ChandraLaw.com.

If, by **Friday, December 16, 2022 (one week from today)**, you do not immediately and unconditionally reinstate Mr. Morrison to mitigate the harm inflicted on him—and **being inflicted upon him as a health-insurance-deprived cancer patient**, we will act swiftly and accordingly.

In the meantime, you must preserve all evidence and data related to this matter. Our firm is adverse to you and the County. This is not legal advice to you. You should engage and contact your own lawyers.

We thank you for your prompt attention to this matter.

Sincerely,



Subodh Chandra